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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

GINGER R. DRAKE,

Plaintiff and Appellant,

v.

CITY OF LOS ANGELES,

Defendant and Respondent.

B204182

(Los Angeles County  
Super. Ct. No. BC338179)

APPEAL from an order of the Superior Court of Los Angeles County, Judith C. Chirlin, Judge. Affirmed.

Ginger R. Drake, in pro. per., for Plaintiff and Appellant.

Kramer Deboer Endelicato & Keane, Jeffrey S. Kramer and James R. Motter for Defendant and Respondent.

## **INTRODUCTION**

Plaintiff Ginger R. Drake appeals from an order dismissing her case against defendant City of Los Angeles, erroneously sued as the Los Angeles Convention Center, for failure to comply with court orders. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiff brought this action for damages due to negligence. In her complaint, prepared by counsel who represented her at the start of this litigation, plaintiff alleged that on July 17, 2004, while she was working as a security guard at the Los Angeles Convention Center, her foot was severely injured by a malfunctioning door. The injury caused her both physical and mental pain and suffering and caused her to incur medical expenses as well as a loss of income.

Plaintiff received compensation for her injury in the amount of \$10,891 from the State Compensation Insurance Fund, which then placed a lien on any recovery she might obtain in this action.

Almost a year and a half after filing this action, plaintiff's counsel moved to be relieved. He claimed that plaintiff's "uncontrollable and unreasonable behavior and conduct has led to a breakdown of communication with Plaintiff which makes representation extremely burdensome and difficult. Plaintiff's lack of cooperation regarding specific instructions and timeframes has become an obstacle to prosecution of this claim. Plaintiff's behavior is erratic at times, expressed as hostile and verbal abuse directed at [counsel's] staff." The trial court granted counsel's request.

Plaintiff's lack of cooperation continued after her counsel was relieved, hindering defendant's ability to conduct discovery as well as the court's ability to move forward with the proceedings. Plaintiff failed to appear at status conferences, to respond to requests for discovery, or to appear for her scheduled deposition.

After defendant scheduled plaintiff's deposition, defendant continued the deposition several times to allow plaintiff to obtain substitute counsel. After plaintiff filed a substitution of attorney form indicating that she would be appearing in pro. per., defendant rescheduled the deposition. The day before the scheduled deposition, plaintiff telephoned defense counsel's office and stated that she would not appear at the deposition because she was trying to obtain another attorney to represent her. Finally, defendant moved for an order to compel plaintiff's deposition. The trial court granted the motion and set plaintiff's deposition. After trying unsuccessfully on the morning of the scheduled deposition to get defendant to continue the deposition again, plaintiff failed to appear.

Defendant then moved to dismiss the action under Code of Civil Procedure section 2023.030, subdivision (d)(3), due to plaintiff's failure to comply with court-ordered discovery. The trial court issued an order to show cause re dismissal for failure to appear at the deposition and at a subsequent status conference.

At the hearing on the order to show cause and motion to dismiss, the trial court gave plaintiff one more chance to appear for her deposition. It set the deposition with the warning, "If plaintiff does not appear for her deposition on [the scheduled] date, the matter will be dismissed upon motion by defendant." Plaintiff failed to appear, and the trial court dismissed the action.

## **DISCUSSION**

Plaintiff's opening brief is an unintelligible compilation of irrelevant code sections, medical records, accusations and factual claims unsupported by any citation to the record. Rather than demonstrating any error in the trial court's ruling, plaintiff requests that we reschedule her deposition and provide her with medical transport to enable her to attend. We have no power to do so. Our power is limited to a review of the order from which plaintiff has appealed. (*Polster, Inc. v. Swing* (1985) 164 Cal.App.3d 427, 436.)

In addressing an appeal, we begin with the presumption that the trial court's ruling is correct. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133; *Fleishman v. Superior Court* (2002) 102 Cal.App.4th 350, 357.) "It is well settled, of course, that a party challenging a judgment has the burden of showing reversible error by an adequate record." (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574; *Robbins v. Los Angeles Unified School Dist.* (1992) 3 Cal.App.4th 313, 318.) Meeting this burden requires citations to the record to direct the court to the pertinent evidence or other matters in the record which demonstrate reversible error. (Cal. Rules of Court, rule 8.204(a)(1); *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115; *Culbertson v. R. D. Werner Co., Inc.* (1987) 190 Cal.App.3d 704, 710.) To the extent plaintiff has made reference to factual or procedural matters without record references, we will disregard such matters. (*Yeboah v. Progeny Ventures, Inc.* (2005) 128 Cal.App.4th 443, 451; *Gotschall v. Daley* (2002) 96 Cal.App.4th 479, 481, fn. 1.) Neither will we consider any claim of error based on statements unsupported by record references. (*Weller v. Chavarria* (1965) 233 Cal.App.2d 234, 246.)

Meeting the burden on appeal also requires citation to relevant authority and argument. (*Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545-546; *People v. Dougherty* (1982) 138 Cal.App.3d 278, 282.) It is not our responsibility to comb the appellate record for facts, or to conduct legal research in search of authority, to support the contentions on appeal. (*Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 768; see also *Annod Corp. v. Hamilton & Samuels* (2002) 100 Cal.App.4th 1286, 1301.) Moreover, to the extent plaintiff makes claims "without development and, indeed, without a clear indication that they are intended to be discrete contentions, they are not properly made, and are rejected on that basis." (*People v. Turner* (1994) 8 Cal.4th 137, 214, fn. 19.)

Plaintiff has failed to meet her burden of establishing reversible error by an adequate record. We acknowledge a self-represented litigant's understanding of the rules on appeal are, as a practical matter, more limited than an experienced appellate attorney's. Whenever possible, we do not strictly apply technical rules of procedure in a

manner that deprives litigants of a hearing. However, when, as here, the total lack of compliance with the Rules of Court results in our inability to conduct a meaningful review of the trial court's decision, we cannot ignore the fundamental rules of appellate practice. (See *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.)

In any event, the trial court has broad discretion in determining whether to impose discovery sanctions. (*R.S. Creative, Inc. v. Creative Cotton, Ltd.* (1999) 75 Cal.App.4th 486, 496; *Vallbona v. Springer* (1996) 43 Cal.App.4th 1525, 1545.) The trial court's determination is reversible only for an abuse of discretion, if the determination is arbitrary, capricious or whimsical. (*R.S. Creative, Inc.*, *supra*, at p. 496; *Vallbona*, *supra*, at p. 1545.) The trial court's order is presumed to be correct, however, and the appellant has the burden of demonstrating an abuse of discretion. (*Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, 487, disapproved on another ground in *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478, fn. 4; *Young v. Rosenthal* (1989) 212 Cal.App.3d 96, 123.)

The imposition of the ultimate sanction, termination of the action under Code of Civil Procedure section 2023.030, subdivision (d)(3), "is a drastic penalty and case law recognizes that it should be sparingly used." (*Thomas v. Luong* (1986) 187 Cal.App.3d 76, 81.) It is appropriate only for "continued wilful violations of the discovery statutes." (*Laguna Auto Body v. Farmers Ins. Exchange*, *supra*, 231 Cal.App.3d at pp. 490-491.)

The record before us amply supports the trial court's implied finding that plaintiff was guilty of "continued wilful violations of the discovery statutes." (*Laguna Auto Body v. Farmers Ins. Exchange*, *supra*, 231 Cal.App.3d at p. 490.) Her deposition was scheduled numerous times, even continued several times at her request, yet each time she was scheduled to appear she came up with some reason why she was unable to do so. The trial court finally ordered her to appear or risk dismissal of the action, and again she failed to appear. The record supports the trial court's exercise of its discretion in imposing a terminating sanction, and plaintiff has not met her burden of demonstrating any abuse of discretion. (*Id.* at p. 487.)

## **DISPOSITION**

The order is affirmed. Defendant is to recover its costs on appeal.

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JACKSON, J.

We concur:

WOODS, Acting P. J.

ZELON, J.